



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/530,594

05/19/2005

Daniel Lecomte

27592-01111-US

7637

30678

7590

05/24/2010

CONNOLLY BOVE LODGE & HUTZ LLP  
1875 EYE STREET, N.W.  
SUITE 1100  
WASHINGTON, DC 20006

EXAMINER

POPHAM, JEFFREY D

ART UNIT

PAPER NUMBER

2437

MAIL DATE

DELIVERY MODE

05/24/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 10/530,594</p>	<p><b>Applicant(s)</b> LECOMTE ET AL.</p>	
	<p><b>Examiner</b> JEFFREY D. POPHAM</p>	<p><b>Art Unit</b> 2437</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 12 May 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: \_\_\_\_\_.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

/Jeffrey D Popham/  
Examiner, Art Unit 2437

Continuation of 3. NOTE: The amendments to the independent claims, such as specifying that the format of the modified stream corresponds to a format "into which the audio blocks are organized" changes the scope of the claims and would require further consideration and/or search.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues, with respect to the amendment noted in (3) above, that "the above amendments overcome this interpretation of Kalra" as well as providing arguments as to why applicant believes this to be the case. As the amendments are not entered, this argument is deemed moot.

Applicant argues that Kalra fails to disclose or suggest "wherein the modified stream is distorted with respect to the original audio stream by modifying at least one encoded value of an audio block of the original audio stream." However, as Applicant argued just prior to this argument, Kalra teaches modifying the information "at least to insert further information". Clearly, inserting additional information to the audio stream comprises modifying at least one encoded value of the audio stream. Furthermore, Kalra discusses that "audio is also transmitted by the stream management module based upon profile characteristics selected by the user, such as whether mono or stereo sound that is oversampled or not is desired." (Column 4, lines 56-59). Clearly, removal of a channel to provide mono sound modifies at least one encoded value of the stream by removing it. Furthermore, oversampling also clearly modifies at least one encoded value of the stream by modifying it.

Applicant argues that "Buxton merely discusses "at the moment" determination of what rights a user may have. Merely teaching that one may determine whether a user has access rights has no nexus to placing information about such determination into a user profile". It is noted that Applicant provides no mention of Kalra with respect to a user profile, even though Kalra was cited as teaching accessing a data profile and determining, based on the profile, the information to be transmitted to the target equipment (in claim 44, from which claim 47 depends). Clearly, Kalra teaches the profile that includes information used in making such a determination. Therefore, in the Kalra-Buxton combination, data that is used in making the determination of information to be transmitted to target equipment is within the profile of Kalra.

Applicant requests a new office action, arguing that the final office action is incomplete. Applicant goes on to provide arguments with respect to the advisory action of 4/23/2010. It is noted that the point that Applicant is arguing (that the advisory action stated that "the dependent claim need not state what each reference teaches or does not teach, but rather, as both references are already within the combination, either reference can be shown to teach the limitation, even if the other reference also teaches that limitation, or portions thereof." Applicant believes that, due to this, "if is respectfully submitted that the Office Action is deficient and fails to provide Applicants with a "fair opportunity to reply.""). The Examiner is unsure how the rejection of claim 47 (dependent from claim 44) could possibly be construed as being incomplete. The advisory action did not provide any additional rejection for this claim. However, the advisory action did describe how Kalra was already cited as teaching the profile and determining based on the profile, the information to be sent to the target equipment, as in the rejection of claim 44. As claim 47 depends from claim 44, this teaching was already clearly and explicitly set forth in the rejection of claim 44. The Examiner need not state this teaching again in claim 47, as claim 47 is dependent from claim 44. This would be akin to requiring that every single limitation of independent claims were discussed in dependent claims when providing a 103 rejection. The rejection is complete and a new office action is not required.